THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 20910 of 2007

O r d e r:

Assailing the award dated 19.09.2006, passed by the Labour Court, Guntur, insofar as denying back wages, the petitioner-workman filed the present writ petition.

The petitioner is working as a Driver in the 1st respondent-APSRTC. He was issued a charge sheet alleging that he drove the vehicle AP 10Z 7786 by consuming alcohol on 25.05.2000. The petitioner submitted his explanation denying the charges framed against him. Having not satisfied with the same, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry, submitted his report holding that the charges are proved against the petitioner. Based on the said enquiry report, a show cause notice was issued calling upon the petitioner to show cause as to why he shall not be removed from service, and the petitioner submitted his reply to the said show cause notice. However, the petitioner was removed from service. Assailing the said order of removal, the petitioner filed appeal and review petitions before the appellate and review authorities, which were rejected. Thereafter, he raised an industrial dispute in I.D. No. 195 of 2001, and the Labour Court, by reason of the impugned award dated 19.09.2006, directed the 1st respondent-APSRTC to reinstate the petitioner into service with continuity of service but without back wages. Assailing the award of the Labour Court, in so far as it denied back wages, the petitioner-workman filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent-APSRTC.

The learned counsel for the petitioner submitted that the Labour Court failed to observe that the petitioner has not taken any alcohol and he has taken "Nervitond" Tonic as per the prescription of the Medical Officer. He further submitted that the Labour Court, having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate and review authorities, ought to have ordered his reinstatement into service with back wages. He thus, prays to set aside the award of the Labour Court, in so far as it denied back wages.

On the other hand, learned Standing Counsel for the 1st respondent-APSRTC submitted that the charges framed against the petitioner stood proved in the departmental enquiry. The disciplinary authority passed order of removal, which was confirmed by the appellate and review authorities, and though the Labour Court concurred with the view of the authorities, yet it has taken a lenient view and ordered reinstatement of the petitioner into service with continuity of service, but without backwages, and the same cannot be said to be illegal and arbitrary, warranting interference by this Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

In that, the jurisdiction, to issue a writ of certiorari and quash the order of punishment imposed on a delinquent employee, is

supervisory and the Court exercising it does not act as an appellate Court. This limitation, necessarily means that findings of fact reached by the inferior Court or Tribunal, as a result of appreciation of evidence, cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, it must always be borne in mind that a finding of fact recorded by the Tribunal cannot be challenged in certiorari proceedings on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred under Article 226 of the Constitution of India to issue a writ of certiorari can be legitimately exercised. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. To be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an

error which is self-evident. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error (See **Syed Yakoob v. K.S. Radhakrishnan**[2] and **Ranjeet Singh v. Ravi Prakash**[3]).

It is within the confines of this limited area, the impugned award of the Labour Court, may be judged.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the departmental enquiry, and the departmental enquiry was held to be valid by the Labour Court. The petitioner was charge sheeted on the ground that he drove the vehicle by consuming alcohol. The said charges leveled against the petitioner stood proved in the departmental enquiry. The Labour Court, upon re-appreciating the entire material on record, including the evidence, though observed that the breath analyzer test gave positive result, but since neither the passengers were examined in the domestic enquiry nor the passengers gave any written complaint to the TTI with regard to consuming of alcohol by the petitioner while driving the bus, and also having regard to the fact that the Conductor of the bus also did not state anything against the petitioner in the domestic enquiry, it held that there is no evidence to show that the petitioner was under the influence of intoxication. Holding so, the Labour Court, after taking into consideration the previous service record and considering the fact that he was due to retire in two years, felt that the punishment awarded by the disciplinary authority, as confirmed by the appellate and review authorities, was harsh and disproportionate to the misconduct, and accordingly, while setting aside the order of removal, in exercise of its discretion under

Section 11-A of the Industrial Disputes Act, 1947 directed reinstatement of the petitioner into service with continuity of service but

without backwages.

Consumption of alcohol by a Driver while on duty, is a serious misconduct, for he is vested with the duty of transporting passengers and goods. If a Driver consumes and drives the vehicle, he either risks the lives of the passengers traveling in his vehicle or risks the lives of the Drivers and passengers of other vehicles plying on the road. In fact, drunken driving is an offence under the Motor Vehicles Act, 1988. Be that as it may, in the case on hand, the Labour Court considering the fact that the breath analyzer test gave positive result, held that there was evidence to show that the petitioner consumed alcohol, but curiously it came to the conclusion that the petitioner was not under the influence of alcohol. It is not the degree of intoxication that is relevant, but the question is whether the petitioner has consumed alcohol or not. The Labour Court having found that the petitioner had consumed alcohol, ought not to have interfered with the punishment imposed by the disciplinary authority. Though the impugned award for that reason cannot be sustained, but since the respondent-Corporation, has not filed any writ petition assailing the award of the Labour Court directing reinstatement of the petitioner into service, I am not inclined to interfere with that part of the award.

Now coming to the question of award of backwages. The law is well settled that merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages. Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[4]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was

set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate and review authorities had passed orders in violation of the principles of natural justice, but the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate and review authorities, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct, and given the nature of proved misconduct, I am of the considered opinion that the Labour Court by directing reinstatement of the petitioner into service has shown much indulgence to the petitioner, and for such act of proved misconduct, the punishment of denial of backwages to the petitioner, cannot be said to be illegal.

The award of the Labour Court judged from the parameters of certiorari jurisdiction of this Court under Article 226 of the Constitution of India, does not call for interference, for the petitioner failed to point out any infirmities.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 2nd November 2007.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] 1964 (5) SCR 64
[3] (2004) 3 SCC 682
[4] (2006) 1 SCC 479